



Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Coleen H. Sullins, Director
Division of Water Quality

January 14, 2008

DWQ#: 07-1809
Dare County

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
#7002 1000 0005 2387 3499

Town of Southern Shores
Attn: Mike Hejduk
5375 North Virginia Dare Trail
Southern Shores, NC 27949

Subject: **Denial of Request for 401 Certification**
Request for Canal Dredging Phase I in the Town of Southern Shores
Dare County

Dear Mr. Hejduk:

Your application for a Water Quality Certification under Section 401 of the Federal Clean Water Act was received on October 26, 2007. The activity for which the certification is requested is to allow the dredging of approximately 2.3 miles of open waters of the Currituck Sound, Jean Guite Creek, and the Town of Southern Shores Canal system. These waters are classified as SC by the Environmental Management Commission (EMC) and also designated as a Primary Nursery Area (PNA) by the Wildlife Resources Commission (WRC). The proposed project requests to dredge 33,231 cubic yards of bottom sediments with 228,400 square feet of that area containing Submerged Aquatic Vegetation (SAV). A Water Quality Certification represents a determination by the Division that the activity, for which the federal permit or license is being required, is not expected to result in a violation of state water quality standards for Waters of the State.


Our review must determine whether a proposed project will remove or degrade the existing uses of Waters of the State. Through a thorough review of the project as well as a site visit to the proposed project area, a scoping meeting with the applicant and comments from other resource agencies, our staff has determined that the request to dredge the project area is a "Removal of Best Use" as described in 15A NCAC 2B. 0220(1)(2) and prohibited by 15A NCAC 2H .0506. The Division has determined that the dredging activity will result in the removal of 228,400 square feet of SAV habitat. Impacts to these waters would also carry secondary and cumulative impacts to fisheries resources by the removal of habitat in an area designated for fish propagation. Therefore, I am hereby notifying you that this project, in the state that it currently is proposed, would violate 15A NCAC 2H.0506, and in accordance with 15A NCAC 2H .0507(e), your application for a 401 Water Quality Certification is hereby denied.

If you wish to appeal this decision, you have the right to an adjudicatory hearing upon written request within sixty (60) days of your receipt of this denial. To ask for a hearing, send a written petition, which conforms to Chapter 150B of the North Carolina General Statutes to the Office of

Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. This denial is final and binding unless you ask for a hearing.

Should you have information that you believe may alter our decision, we are available to discuss this matter further. Please direct such information, or questions regarding this denial, to Mr. Ian McMillan at 919-715-4631, Ms. Cyndi Karoly at 919-733-9721, or Kyle Barnes at our Washington Regional Office at 252-948-3917.

Sincerely,



Coleen H. Sullins

CS/AH/lj

cc: Cyndi Karoly, DWQ 401 Oversight/Express Unit
David Lekson, US Army Corps of Engineers, Washington Field Office
Ken Jolly, US Army Corps of Engineers, Wilmington District Office
Doug Huggett, CAMA Major Permits Coordinator, Morehead
Rebecca Fox, US Environmental Protection Agency – Region IV
Kyle Barnes, DWQ, WaRO
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